

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 15967 of 2003

Between:

M. Abdul Lateef S/o M.A. Rahim, aged about 36 years,

Cooperative Sub-Registrar(Under Orders of dismissal from service), Guntur.

..... PETITIONER

AND

1.The Government of Andhra pradesh, rep by its Principal

Secretary, Agriculture and Cooperation Dept., Secretariat,

Hyderabad 500 022

2.The Commissioner, of Cooperation, Government of Andhra

Pradesh, Hyderabad

....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Andhra Pradesh Administrative Tribunal in dismissing the O.A. no. 5746/2002, dated:22-4-2003 as illegal, arbitrary and unjust and

consequently set aside the impugned order of the 1st respondent issued vide G.O.Rt. No. 499 Agriculture and Cooperative (Vig.Cell) Dept dated: 5-5-2002.

Counsel for the Petitioner: MR.V.V.L.NARASIMHA RAO VAJRALA

Counsel for the Respondents : GP FOR SERVICES I

The Court made the following :

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J U D G M E N T :

(per G. Bikshapathy J)

1. The Writ Petition is filed challenging the Order passed by the Andhra Pradesh Administrative Tribunal in O.A.NO. 5746 of 2002, dated: 22.4.2003.

2. Petitioner is the applicant before the tribunal. He joined the service as Cooperative Sub-Registrar in 1995. While so, at the relevant time namely 1999, he was working as Sales Officer in Guntur Cooperative Central Bank. According to the duties attached to his post, he has to collect over due loans from the borrowers. One Mr. Gudibandla Vema Reddy and his mother Samrajyamma are members of Primary Agricultural Cooperative Society, Gorantla. They have taken a loan of Rs. 67,100/- and Rs. 62,400/- from the financing Bank viz. Guntur Cooperative Central Bank for purchase of a tractor in the year 1994. It is stated that the said borrowers have been paying the instalments for some time according to the terms and conditions of the sanction of the loan, but they committed default in payment of the instalments during 1998. Therefore, recovery proceedings were initiated before the Deputy Registrar in February, 1998. After giving notices and on failure to pay the overdue balance, the tractor was attached and it was sought to be auctioned on 4.5.1999. However, it is stated that on request of the borrower Vema Reddy, the auction was postponed to 11.5.1999. However, when he sought further time, it was refused. It is

the case of the petitioner that he became annoyed and used unparliamentary language to the petitioner and threatened with dire consequences, as the tractor was seized for the purpose of its sale in public auction.

3. While so, on 15.5.1999, Vema Reddy paid an amount of Rs. 13,000/- and a sum of Rs. 1,676/- was due from him. Therefore, the seized tractor was released on 17.5.1999. It is also stated by Vema Reddy that he would pay the balance amount in the due course. According to the petitioner on 20.5.1999, he went to the petitioner's house and paid Rs. 2,000/- and also further stated that his mother's due will also be cleared shortly. The petitioner also appears to have prepared a receipt in the name of the mother of Vema Reddy, but in the meanwhile A.C.B. authorities arrived and laid a trap stating that the petitioner accepted the bribe from Vema Reddy and after the enquiry he was released on bail. No criminal proceedings were initiated against the petitioner. But, however, Government referred the matter to the Tribunal for Disciplinary Proceedings for enquiry. Accordingly, enquiry was conducted before the Tribunal for Disciplinary Proceedings and the Tribunal for Disciplinary Proceedings found the petitioner guilty of accepting the bribe from Vema Reddy and accordingly submitted a report to the Government by an Order dated: 12.2.2001. The said report was furnished to the petitioner to which he submitted an explanation and thereafter the Government passed Orders in G.O.Rt.No. 499, dated: 15.5.2002 imposing the punishment of dismissal from service.

4. Aggrieved by the said Order of dismissal dated: 15.5.2002, the petitioner filed O.A.NO. 5746 of 2002 before the Andhra Pradesh Administrative Tribunal. The learned Andhra Pradesh Administrative Tribunal after considering the matter observed that there were no procedural irregularities and that it is not a case of no evidence and holding so, the Andhra Pradesh Administrative Tribunal dismissed the O.A. by an Order dated: 22.4.2003, against which the present Writ Petition has been filed.

5. The learned counsel appearing for the petitioner submits that the disciplinary tribunal gravely erred in finding the guilt of the accused. He further submits that the evidence has been misconstrued, misappreciated and misapplied by the tribunal. The tribunal had proceeded only with the sole aim of finding guilt of the petitioner of the charges disregarding the evidence which is forthcoming in favour of petitioner which established that the petitioner was not guilty. Even otherwise also, the evidence establishes any amount of doubt as to the commission of misconduct on the part of the petitioner. He further submits that the tribunal having found that the entire case stands on the evidence of complainant-Vema Reddy only acted on the statement, which is favourable to the department and failed to take into consideration the matters elicited in the cross examination. The learned counsel would also submit that even the supporting evidence of the Secretary was also not properly considered by the tribunal. Thus, he submits that though reappraisal of the evidence is not within the purview of the tribunal, but at the same time, if there is misappreciation of the evidence leading to the substantial injustice to the aggrieved party or if the finding is recorded by picking and choosing the only evidence which is favourable to the department, in such an event, the tribunal is entitled to interfere with the findings and pass appropriate Orders. The learned counsel would further submit that the Government has not taken into consideration this important and vital aspect, even though it was specifically mentioned in the explanation submitted in pursuance of the report of the Tribunal for Disciplinary Proceedings furnished to him. It is also further submitted that the Government was swayed away by the wording that he has accepted the bribe, little realising that there is no legally acceptable evidence before the tribunal. Hence, the Order of the tribunal is liable to be set aside.

6. The learned Government Pleader, however, submits that this is a case where the department has established the misconduct of the employee relating to demand and acceptance of bribe by the evidence of complainant-Vema Reddy and therefore, the findings recorded by the Tribunal for Disciplinary Proceedings as accepted by the Government are quite appropriate and reasonable. It is not open for the

Administrative Tribunal to interfere with the findings recorded by the Disciplinary Tribunal and therefore, the Order of the Administrative Tribunal is quite legal and valid and it does not require any interference.

7. The facts which are not in dispute are that the petitioner was working as Cooperative Sub-Registrar in the Cooperative Department and during 1999, he was the Sales Officer attached to Guntur Cooperative Central Bank, which is a financing bank in respect of the Primary Agricultural Cooperative Societies including the Gorantla P.A.C.S. It is also on record that Vema Reddy and his mother Samrajamma took a joint loan for purchase of a tractor in the year 1994 and they have committed default in payment of loan amounts in the year 1998. Therefore, recovery proceedings were initiated. As they failed to pay the instalments in accordance with the terms and conditions of the loan, the tractor was seized for the purpose of auctioning. The auction was slated on 4.4.1999 and the auction could not take place at the request of the borrower-Vema Reddy. It is also on record that on 15.4.1999 he paid a sum of Rs. 13,000/- leaving the balance of Rs. 1,676/-, yet to be paid in the account of Vema Reddy. However, it is the case of the department that the petitioner-Charged Officer demanded a sum of Rs. 2,000/- as bribe so as not to seize the tractor and auction the same in respect of the default committed by his mother and therefore, a sum of Rs. 2,000/- was paid to him by Vema Reddy on 20.5.1999 as wherein he was caught red handed and the Phenolphthalein test conducted by the A.C.B. authorities proved positive and therefore, it was contended by the department that the tribunal was fully justified in holding the petitioner guilty of the charges.

8. The Government had referred the matter for enquiry to the Tribunal for Disciplinary Proceedings by a letter dated: 12.6.2000. On receipt of the requisition, the Tribunal for Disciplinary Proceedings registered a case as Enquiry Case No.31/2002. The following charge was framed against the petitioner:

“that during the period of his official duty he indulged in corrupt

practices in abuse of his official position and demanded and accepted bribe of Rs. 2,000/- on 20.5.1999 from the complainant-G. Vema Reddy of Jonnalagadda village to do official favour i.e. to give him time to pay the over due long term loan of his mother and not to seize the tractor again and give a release Order of the tractor which was already seized. Thus, the said act constitutes a misconduct on the part of the petitioner within the meaning of Rule 2(b) of A.P. Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 framed under the A.P. Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 as amended in 1993 and as amended from time to time.”

The petitioner submitted an explanation to the charge and pleaded not guilty. 7 witnesses were examined and Ex.P-1 to P-8 were marked, material objects M.Os.1 to 6 were also marked by the Court including the alleged tainted amount of Rs. 2,000/-. No witnesses were examined for defence, no documents were marked. The learned tribunal after considering the evidence held that the charge as framed against the petitioner was proved. Accordingly, after issuing show cause notice duly furnishing the report of the tribunal, the Government issued Order of dismissal in G.O.Rt.No. No. 499, dated: 15.5.2002.

9. The principle question that calls for consideration is whether the finding recorded by the tribunal was in accordance with law?

10. It is well-settled principle right from STATE OF ANDHRA PRADESH Vs. SREE RAM RAO that the High Court sitting Under Article 226 of Constitution of India is not a Court of Appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is only concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. However, the High Court may undoubtedly interfere where the departmental authorities held the proceedings against the delinquent in a manner inconsistent with the principles of natural justice or in violation of the statutory rules prescribing

the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion or on similar grounds. The adequacy and sufficiency of the evidence is not a matter, which can be canvassed before the High Court. This decision was followed in CENTRAL BANK OF INDIA V. PRAKASH CHAND JAIN and BHARAT IRON WORKS V. BHAGUBHAI BALUBHAI PATEL. In RAJINDER KUMAR KINDRA V. DELHI ADMINISTRATION THROUGH SECRETARY (LABOUR), it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial Tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The said view was reiterated in YOGINATH D.BAGDE Vs. STATE OF MAHARASHTRA.

11. In NAND KISHORE V. STATE OF BIHAR, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and, that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

12. The High Court in cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate Court/authority. The jurisdiction of

the High Court in such cases is very limited, for instance where it is found that the domestic enquiry is vitiated because of the non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and/or the punishment is totally disproportionate to the proved misconduct of an employee. (See: *INDIAL OIL CORPORATION Vs. ASHOK KUMAR ARORA* (AIR1997 S.C.C. 1030)).

13. A broad distinction has to be maintained between the decision which is perverse and those, which are not. If a decision is arrived at on no evidence or it is thoroughly unreliable or no reasonable person can act on it, the Order would be perverse. But, if there is some evidence on record, which is acceptable and which could be relied upon, how so ever compendious it may be the conclusion would not be treated as perverse and the findings would not be interfered with (See: *KULDIP SINGH Vs. COMMISSIONER OF POLICE* (AIR 1999 S.C. 677)).

14. It is clear from the aforesaid decisions that in departmental proceedings, the disciplinary authority is the sole Judge of a fact and in case an appeal is presented to the appellate authority, the appellate authority has also the powers of a Judge and jurisdiction to reappraise the evidence and come to its own conclusion on facts being the sole fact finding authority. Once finding of fact based on evidence is recorded, the High Court in writ jurisdiction may not normally interfere with the proceedings, unless it finds that the recorded findings were based either on no evidence or that the findings are wholly perverse and which are legally untenable. The adequacy or inadequacy is not permitted to be canvassed before the High Court, since High Court does not sit as an appellate authority over the factual finding recorded in departmental proceedings. While exercising the power of the judicial review, the High Court cannot, normally speaking, substitute its own conclusion with regard to the guilt of the delinquent for the departmental authorities. Even so far as the imposition of the penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary authority is either impermissible or such that it

shocks the conscience of High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Even though, the power of judicial review of being expected to be flexible and its dimension not closed, yet the Court in exercise of the power of its judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those Orders are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. The disciplinary enquiry is not a criminal trial. The Standard of proof required to be proved is preponderance of probabilities and not proof beyond reasonable doubt. It has to be remembered that the judicial review is directed not against the decision, but is confined to the examination of the decision-making process. In the words of Lord Halton in *Chief Constable of the North Wales Police v. Evans* (1982) 3 All ER 141, observed:

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the Court."

15. The tribunal had clearly observed that to prove the charge the evidence of only sole witness was available namely complainant-P.W.2-Vema Reddy and other evidence only with regard to recovery of the tainted money from the petitioner and the evidence of mediators as also the Deputy Superintendent of Police, who conducted the trap. Therefore, it has to be considered whether there was any evidence to establish demand for bribe and whether in fact the money was given to the petitioner in pursuance of the demand for bribe. The tribunal discussed the evidence of the complainant and it was accepted by him that he was a defaulter and that it is also on record that the tractor was seized from the possession of the petitioner on 20.4.1999. The notice of sale was issued earlier and it was postponed at the request of the petitioner. But, the crucial evidence that is required to be considered is according to the P.W.2, he paid Rs. 13,000/- on 15.5.1999 to the Secretary of the Society. It is also in the evidence of the complainant that on

16.5.1999, he met the petitioner at his house and requested him to release the tractor and also requested him to give some more time to pay the instalments of his mother. He further stated that the petitioner demanded Rs. 2,000/- as bribe for release of the tractor and to give further time. But, however, the tractor was released on 17.5.1999. According to his evidence, he went to the house of the petitioner on 17.5.1999, when he met the petitioner again he demanded Rs. 2,000/- and when the petitioner had stated that why he had to pay Rs. 2,000/- more, when his E.P. is only for lesser amount, the petitioner was stated to have informed the complainant that he has to pay Rs. 15,000/- more as over due instalment of his mother. On this verbal altercation, he left the house stating that he would again come to his house after two or three days. But, it has to be noted that this is the sole evidence of the complainant while the same was denied by the petitioner and there is no supporting evidence to the effect that he met the petitioner on 16.5.1999 and also on 17.5.1999 at his house. However, the learned tribunal basing on this evidence, records a finding that there is a demand for bribe and the petitioner made repeated demands to pay the bribe. The tribunal also recorded a finding that there was a demand on 16.5.1999 and also on 17.5.1999.

16. The question that calls for consideration is whether there was any demand from the petitioner for demanding bribe?

17. For this purpose, the petitioner has clearly brought out the extract of statement made by the complainant in his written arguments filed before the tribunal, he extracted the deposition of the complainant in chief, which is as follows:

“On the same day in the evening he went to the house of the C.O. and met and met him in his house. The C.O. demanded Rs. 2,000/- more as E.P. was only for Rs. 13,000/-. The C.O. informed him that he has to pay Rs. 15,000/- as old instalments for which he has paid Rs. 13,000/-. Then, he asked the C.O. that he will pay only the amount shown in the E.P. and remaining amount he do not want to pay. Then he left the house informing the C.O. that he will come after 2 or 3 days to pay the demanded instalments by the C.O.”

In the cross examination, he stated as follows:

“It is true that the C.O. had insisted or demanded me to pay the arrears due against my loan. I assumed that the amount of Rs. 2,000/- demanded by the C.O. to be paid as arrears as bribe and lodged a complainant Ex.P-3 to the ACB.”

Thus, there is a categorical admission by the complainant that the C.O. has insisted and demanded him to pay the arrears due against his loan and that the said demand was understood by him as bribe and therefore, he lodged a complainant. The complainant further stated in the cross examination as follows:

“By the date of the case the instalments due for the period from 1998-99 were also due from me. It is true that I have not mentioned in Ex.P-3 that the C.O. asked for Rs. 2,000/- on 16.5.99 (when) I paid Rs. 13,000/- on 15.5.1999. On 17.5.1999 when I went to collect the release Order, I met the Society President Sivaiah, Secretary Jaganmohan Rao and Supervisor, Shankar Rao. It was agreed between the President, Secretary in the presence of the Supervisor and the C.O. that I would clear my dues within two or three days and that the Society will sanction a fresh short term crop loan on my lands and with that amount to clear the loan outstanding against my mother and the C.O. was advised to wait till the next season.”

P.W.2, the Secretary of the Society also stated in support of the version given by the petitioner, which is as follows:

“On 17.5.1999 P.W.2 approached me, the President and supervisor of Society by stating that he will clear the remaining balance of Rs. 2,000/-, if some more time is granted. He informed that he can pay the balance to the sale officer. We also informed him that if he can clear of the balance of Rs. 2,000/- he entitled for short term loan.”

Even the evidence of mediators P.Ws.-4 and 5, who participated in the preparation of panchanama, they stated as follows:

“P.W.4:

It is true that C.O. has informed me and the A.C.B. officials after the trap that due to vengeance and to take revenge against him for seizing the tractor of P.W.2 a false complainant was lodged before A.C.B. and he was received Rs. 2,000/- towards the arrears of E.P. amount and not as bribe. In Ex.P-5 it is not mentioned that the C.O. has informed us that P.W.2 has lodged a false report to ACB for seizing the tractor. In Ex.P-5 it is mentioned that the C.O. has informed D.S.P. that he could not issue a receipt for receiving Rs. 2,000/- as he is in hurry. We did not search the house of C.O. to seize the receipt book.

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P.W.5

It is true that the C.O. has informed the D.S.P. that he has received Rs. 2,000/- towards the arrears of loan and not as bribe. The C.O. has also informed that he has attached the tractor of P.W.2 for not paying the loan amount, hence P.W.2 lodged a false report with ACB to take revenge against him and he has not demanded any bribe.”

Further, Deputy Superintendent of Police (P.W.6) also deposed as follows:

“It is true that in Ex.P-5 it is mentioned that soon after the bribe amount is produced by delinquent when he was questioned the delinquent stated that he accepted the said amount as amount of over dues to be paid by him towards tractor loan obtained by him and his mother and he gave the amount to his hands and he kept the same in the iron almirah.”

The Secretary (P.W.3) further stated that P.W.2 got annoyed as the Charged Officer has attached his tractor and he has used unparliamentary language against the Charged Officer. Further he deposed as follows:

“P.W.2 got annoyed as C.O. has attached his tractor and he has used unparliamentary language against the C.O. He also threatened us that is myself and C.O. and others that we will see the consequences for our action.”

18. From this evidence adduced by the department, it was sought to be contended for the petitioner that the demand was only for payment of instalment and not for bribe. In fact the tractor was released on 17.5.1999 and therefore, the scope for

meeting the petitioner on 20.5.1999 at his house was no more necessary and there is no evidence on this aspect that the complainant went to the house of the petitioner on 17.5.1999. The admission made by the petitioner is specific and unambiguous to the effect that the petitioner insisted to pay arrears against his loan and he understood the amount to be paid as arrears as bribe and lodged a complaint to the A.C.B. authorities. The very basis of the complaint on the strength of the statement given by him before the tribunal is shaken i.e. he understood the demand for payment of loan amount as a bribe. Therefore, this aspect ought to have been seriously considered by the tribunal. It is to be noted that the difference between the examination in chief and cross examination is while in examination in chief, the facts were sought to be introduced by the witnesses or complainant, but if any answer is elicited in cross examination which goes against the statement given in the chief examination and that the statement will prevail over the statement given by him earlier in chief examination. When the petitioner had stated that he demanded money for release of the tractor and not to press for the instalments which became due from his mother, there is no reason why he should say in the cross examination that the petitioner only demanded the payment of arrears. Therefore, that statement would over ride the earlier statement. But, this was simply brushed aside by the tribunal stating that it is a stray answer and that the petitioner cannot get any benefit out of it. We find there is no warrant for such a finding. Failure to appreciate the evidence or mis-appreciation/mal appreciation of evidence render the finding vitiated. The tribunal is an impartial body, it is bound to proceed in accordance with the essential requirements of law more especially when the Tribunal is constituted under the Act and headed by a Chairman of the rank of District Judge. The tribunal also found that the evidence of P.W.3 was not reliable in respect of the balances standing to the debit balance standing in the name of P.W.2 and his mother. P.W.3 is none-else-than the departmental witness and he had categorically stated about the instalment and also the arrangement that was made between the parties to close the loan of the mother and that was not at all considered by the tribunal. Even though specific contention was raised before the disciplinary tribunal and Government, it was observed by the Government that the accused officer has no

business to accept money at his house. But at the same time, it was brought in evidence that he was competent to receive the instalment. The Government also observed that the petitioner ought to have asked the defaulter to pay the amount to the Society by demand draft or cheque and accepting the cash at home is a gross violation of the Code of Conduct. These observations are also of no avail inasmuch as the evidence adduced established to the effect that the money was being received by them whenever it is offered. It is also the contention of the petitioner that it would be inappropriate to demand the bribe after tractor is released. If at all the bribe is to be demanded, it should be before the tractor was released and admittedly the tractor was released on 17.5.1995 and thereafter the question of demanding the bribe would not arise. If the tractor is to be brought to sale again the procedure has to be followed before it is put to sale and for recovery of the dues by his mother. But, that situation did not take place. It is also the case of the petitioner that this amount was taken as instalment and receipt was also prepared. But, we are not prepared to accept this contention, inasmuch as, immediately after the amount is to be in the hands of the petitioner, the trap had taken place and therefore, preparing receipt either in the name of the petitioner or his mother is wholly irrelevant.

19. The only crucial question that calls for consideration is whether there was a demand for bribe and whether the amount was paid as a bribe and the only evidence available is the complainant and the petitioner-Charged Officer. When it is highly doubtful that the petitioner had demanded the bribe and when the complainant himself had stated that he demanded the loan amount and he misunderstood the amount as a bribe while filing the complaint itself creates any amount of doubt whether the complainant was coming with true colours. Added to this, P.W.3 had categorically stated that the complainant made unparliamentary language remarks against the petitioner for having attached his tractor. More over, there cannot be any demand for bribe for an action, yet to be initiated. It can be understood that if the tractor is not released, the bribe is demanded and paid for release of the tractor, but in this case the tractor was already released and for the realisation of some other amount for which no recovery proceedings were initiated,

the question of either making demand or paying the bribe does not arise at all. Obviously, as quite rightly deposed by the P.W.3, the complainant himself stated that when his tractor was seized and in that emotion, he brought the amount of Rs. 13,000/- and paid to the Society. Therefore, there is any amount of improbabilities, inconsistencies in the evidence of complainant. Of course, the bribe demanding and accepting is a serious misconduct, but it has to be proved on the basis of legal evidence and it cannot be surmised. Nor the finding can be allowed to be reached on suspicion as suspicions cannot be a substitute for proof.

20. Since there is a serious doubt about the demand and acceptance, the benefit of doubt ought to have been given to the petitioner as held by one of us (GBJ) in K. ABDUL GAFOOR Vs. HIGH COURT OF A.P. Further it is also curious to note that the Government had also not taken any steps to prosecute the petitioner obviously for the reason that there is no evidence to establish the guilt of the accused beyond reasonable doubt. However, this Court is aware that the non-prosecution of the petitioner in a criminal case cannot prohibit the Government from proceeding departmentally. But, even in the departmental enquiry, they have to establish the guilt of the accused in case of misconduct which is quasi criminal in nature, if not beyond reasonable doubt, but beyond preponderance of probabilities. That is also lacking in this case.

21. We have referred to the statement of the petitioner before the tribunal, not for the purpose of reappreciating the evidence, but to satisfy ourselves whether the appreciation was according to law and whether the finding suffers from perversity when tested on the basis of intellect of a man of ordinary prudence. When the complainant had stated in the cross-examination that the petitioner had insisted for payment of arrears due and that he assured the payment of instalment as bribe. On the basis of this statement we find that no person of ordinary prudence would conclude that the petitioner had demanded bribe. Thus, we find that the finding

recorded by the Disciplinary Tribunal suffers from patent illegality and infirmity. The approach of the tribunal appears to have proceeded with the enquiry with preconceived notion only to find the accused guilty of the charge without taking into consideration the relevant evidence of the complainant. The Presiding Officer obviously did not sit with an open mind to hold an impartial disciplinary enquiry which is essential component of principles of natural justice as also reasonable opportunity contemplated by Article 311 of Constitution of India. Under those circumstances, we are satisfied that the finding of the tribunal that the charge had been proved is wholly unsustainable. The Administrative Tribunal had not discussed this issue and observing that the enquiry was properly conducted and refused to interfere with the finding and thus dismissed the application.

22. Accordingly, we set aside the Order of the tribunal and also the Order of the dismissal dated: 15.5.2002 and we direct the reinstatement of the petitioner with all benefits including arrears of salary which he would have got had he not been dismissed from service.

23. Writ Petition is accordingly allowed. No costs.

G.BIKSHAPATHY, J

P.S. NARAYANA, J

28-2-2005

CHV

L.R. COPY TO BE MARKED: Yes

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief justice on this Monday the
Twenty Eight day of February, Two thousand Five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

ONE FAIR COPY TO THE ON'BLE MR. JUSTICE G. BIKSHAPATHY

(FOR HIS LORDSHIP'S KIND PERUSAL)

ONE FAIR COPY TO THE ON'BLE MR. JUSTICE P.S. NARAYANA

(FOR HIS LORDSHIP'S KIND PERUSAL)

To

1.The Principal Secretary, Government of Andhra Pradesh,
Agriculture and Cooperation Dept., Secretariat,
Hyderabad 500 022

2.The Commissioner, of Cooperation, Government of Andhra
Pradesh, Hyderabad

3. Two Copies to the Govt. Pleader for Services-I, High Court of
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